

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

UNITED STATES OF AMERICA,

Case No. 2:22-cr-00008-JCM-EJY

Plaintiff,

V.

GJERGI JUNCAJ,

Defendant.

## ORDER

10 Before the Court is the government’s Motion to Compel Reciprocal Discovery (the  
11 “Motion”). ECF No. 99. The Court reviewed the government’s Motion, Defendant’s response (ECF  
12 No. 115), and the government’s reply (ECF No. 140). Because the Court granted a Motion in Limine  
13 regarding excluding the opinions of Dr. Erik Messamore and Mr. Leon Mare on timeliness grounds,  
14 the issues raised in the government’s motion regarding expert discovery are moot. *See* ECF No. 149  
15 at 5.

## I. BACKGROUND

17 On January 19, 2022, the government indicted Defendant on four counts of 47 U.S.C. §  
18 223(a)(1)(C). ECF No. 2 at 5-7. The allegations state that on January 7, 2021, during less than a  
19 twenty minute time frame, Defendant made four phone calls to the Nevada Secretary of State's  
20 Elections Division during which he threatened an employee who answered those calls. *Id.* at 3-4.  
21 This case is currently set for trial on May 8, 2023 at 9:00 a.m. ECF No. 130.

## II. PARTIES' PLEADINGS

A. The Government's Motion to Compel Reciprocal Discovery.

24 In its Motion, the government requests that Defendant produce all undisclosed material  
25 covered by the reciprocal discovery requirements of Federal Rule of Criminal Procedure 16(b)(1).  
26 ECF No. 99 at 1. The government states the requirements of this Rule encompass any material that  
27 Defendant intends to use during cross-examination of the government's witnesses to support  
28 Defendant's case-in-chief. *Id.* As an alternative, the government requests the Court mandate

1 Defendant to describe, on an *ex parte* basis if necessary, the materials in Defendant's possession that  
 2 Defendant intends to use at trial but so far has not disclosed to the government. *Id.*

3 The government asserts that, following prior requests from Defendant, it provided thousands  
 4 of pages of material in discovery. *Id.* at 2. Yet despite Defendant's obligations under Rule 16 and  
 5 the government's request on January 5, 2023 for the required materials, the government says  
 6 Defendant has not turned over a single document in reciprocal discovery. *Id.* at 2-3. The government  
 7 reiterates its position that Defendant cannot avoid his discovery obligations by presenting the  
 8 materials for impeachment purposes when in reality the material is part of Defendant's case-in-chief.  
 9 *Id.* The government argues Defendant cannot avoid his obligations under Rule 16 by asserting that  
 10 the material to be presented at trial is already in the government's possession. *Id.*

11 The government says it is Defendant's position that he does not have to provide reciprocal  
 12 discovery materials to the government because Defendant does not know which witnesses the  
 13 government will call at trial. *Id.* at 6. The government contends Defendant is wrong as the  
 14 government is under no obligation to turnover a witness list to Defendant. *Id.* The government also  
 15 reminds the Court that Defendant cannot exempt himself from the requirements of Rule 16 on the  
 16 grounds of the privilege against self-incrimination. *Id.* at 8.

17       B.     Defendant's Response.

18 Defendant avers that the government did not comply with United States District Court for  
 19 the District of Nevada Local Rule 12-2 and Local Rule IA 1-3(f) prior to filing its Motion. ECF No.  
 20 115 at 2. Defendant notes that the failure of the government to produce a witness list has impacted  
 21 Defendant's trial strategy and his own witness list, as the potential witnesses he may call depend on  
 22 what witnesses the government chooses to present. *Id.* at 5. Even after a request for the government  
 23 to provide a list of witnesses the government knew it would call, Defendant states no such  
 24 information has been produced. *Id.* at 5-6.

25 Defendant contends he has provided the government with all the reciprocal discovery he has,  
 26 which consists of two news articles and a printout of the Nevada Secretary of State's website. *Id.* at  
 27 7, fn. 4. Defendant opines that the government is using the instant Motion as a fishing expedition to  
 28 unearth Defendant's trial strategy, which is an inappropriate litigation tactic. *Id.* at 7. Defendant

1 reiterates his contention that the government has not acted in the spirit of cooperation concerning  
 2 the discovery issue, that the expert disclosures have now been made to the government (thus mooting  
 3 the issue), and that he reserves the right to use any of the material which the government has  
 4 disclosed. *Id.* at 8.

5       C.     The Government's Reply.

6       The government says that at the April 14 meeting with defense counsel, there was a  
 7 disagreement over whether certain information in the possession of Defendant was intended to  
 8 bolster Defendant's case-in-chief rendering it discoverable or whether it was intended for  
 9 impeachment of the government's witnesses, which would mean the material does not have to be  
 10 turned over under Rule 16. *Id.* at 2. The government cites with skepticism Defendant's submission  
 11 of a list composed of eight witnesses (ECF No. 121) and three internet sources as his entire  
 12 production of discovery. *Id.* The government speculates these witnesses will testify about and rely  
 13 on material that has not yet been produced. *Id.* at 2-3.

14      **III. DISCUSSION**

15      A.     Defendant Must Comply with Federal Rule of Criminal Procedure 16 to the Extent  
 16     He has not Done So.

17       The government moves to compel reciprocal discovery under the provisions of Fed. R. Crim.  
 18 P. 16(b)(1). Rule 16(b)(1)(A) states:

19       If a defendant requests disclosure under Rule 16(a)(1)(E) and the government  
 20 complies, then the defendant must permit the government upon request, to inspect  
 21 and to copy or photograph books, papers, documents, data, photographs, tangible  
 22 objects, buildings or places, or copies or portions of these items if: (i) the item is  
 23 within the defendant's possession, custody, or control; and (ii) the defendant intends  
 24 to use the item in the defendant's case-in-chief at trial.

25       "[T]he term or phrase 'defendant's case-in-chief at trial' as stated in Rule 16(b)(1) applies to  
 26 evidence that a defendant intends to present during the examination of the government's witnesses  
 27 to support his or her defense, as well as to evidence that the defendant intends to present at trial after  
 28 the government rests its case. Rule 16(b)(1) does not, however, require a defendant to disclose  
 29 evidence that defendant intends to use only for purposes of impeachment." *United States v. Palafox*,

1 Case No. 2:16-cr-00265-GMN-CWH, 2018 WL 10016686, at \*2 (D. Nev. Dec. 12, 2018), *citing*  
2 *United States v. Larkin*, Case No. 2:12-CR-319-JCM-GWF, 2015 WL 4415506, at \*5 (D. Nev. July  
3 20, 2015).

4 Rule 16(b)(1)(B) states:

5 If a defendant requests disclosure under Rule 16(a)(1)(F) and the government  
6 complies, the defendant must permit the government, upon request, to inspect and  
7 to copy or photograph the results or reports of any physical or mental examination  
8 and of any scientific test or experiment if: (i) the item is within the defendant's  
9 possession, custody, or control; and (ii) the defendant intends to use the item in the  
10 defendant's case-in-chief at trial, or intends to call the witness who prepared the  
11 report and the report relates to the witness's testimony.

12 "If a party fails to comply with" his/her obligations established by Rule 16, "the court may (A) order  
13 the party to permit the discovery or inspection ...., (B) grant a continuance; (C) prohibit the party  
14 from introducing the undisclosed evidence; or (D) enter any other order that is just under the  
15 circumstances." Fed. R. Crim P. 16(d)(2).

16 In this case, there is no dispute that Defendant requested and was provided significant  
17 discovery from the government. ECF No. 99 at 2, ECF No. 115 at 5, n. 2. As a result, Defendant's  
18 has reciprocal duties under Rule 16(b)(1). The Court notes that on May 3, 2023, the government  
19 produced a list of witnesses it intends to call at trial. ECF No. 125. This renders moot any argument  
20 by Defendant that his obligations under Rule 16(b)(1) were somehow obviated by lack of access to  
21 a witness list.

22 **IV. ORDER**

23 IT IS HEREBY ORDERED that the government's Motion to Compel Reciprocal Discovery  
24 (ECF No. 99) is GRANTED.

25 IT IS FURTHER ORDERED that under Rule 16(b)(1) of the Federal Rules of Criminal  
26 Procedure and to the extent he has not already done so, Defendant is ordered to disclose to the  
27 government the items of evidence that Defendant intends to use in his case-in-chief at trial, which  
28 includes items of evidence that Defendant intends to use to support his defense during his

1 examination of the government's witnesses, as well as evidence Defendant intends to present after  
2 the government rests its case. However, Defendant is not required to disclose evidence that he  
3 intends to use only for impeachment purposes.

4 Dated this 8th day of May, 2023.

5   
6 ELAYNA J. YOUCAH  
7 UNITED STATES MAGISTRATE JUDGE

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